

ADDITIONAL FEE:

No additional fee is believed required in connection with this amendment. However, should it be determined that a fee is due, authorization is hereby given to charge any such fee to our Deposit Account Number 01-0268.

REMARKS

In accordance with this amendment, which forms part of applicant's request for continued examination, claims 10, 16, 22, 25 and 26 have been amended to further patentably distinguish the claims over the prior art and to overcome the restriction requirement between the Group I and Group II claims.

In the final Office Action, the Examiner maintained the restriction requirement, stating that Group I requires a control device and specifies the material of the device must be flexible and torsionally resistant. While this is true with respect to independent claim 10, it is not correct with respect to independent claim 16 which does not require that the material of the device be flexible and torsionally resistant. Independent claim 22 of Group II has been amended to recite that the outer and inner tubular bodies are flexible yet torsionally resistant, and dependent claim 25 of Group II recites a control device. Thus claims 10-15 of Group I and claims 22, 23 and 25 of Group II relate to a single general inventive concept and are no longer restrictable.

Independent claim 16 of Group I recites that the control device and the envelope body and the inner body are embodied in such a way that magnetic fields of different polarity can be alternately generated along the length of the envelope body and along the length of the inner body for the selective

production of a mutual attraction of the two bodies. Similarly, independent claim 26 of Group II recites means for selectively creating magnetic attraction forces of opposite polarity between the inner and outer bodies at spaced-apart locations along the lengths thereof to restrain relative movement between the inner and outer bodies to impart stiffness to the device. The means-plus-function format of claim 26 relates to the same general inventive concept as the control device of claim 16 and thus claims 26, 28 and 29 of Group II are not properly restrictable from claims 16-21 of Group I.

As presently worded, all the claims relate to a single general inventive concept, and applicant respectfully requests withdrawal of the restriction and an action on the merits of all of the pending claims.

Applicant appreciates the Examiner's additional comments set forth in the Advisory Action, and applicant will address these comments to advance prosecution.

With respect to claim 10, the Examiner states that Whayne discloses in Fig. 8B an inner body 28 that is a dihedron and hence has a polygonal shape as required by the claim. This is not correct. The inner body 28 has a completely curved cross section and therefore is not a polygon. Applicant also traverses the Examiner's contention that the polygon shapes disclosed by Bai would help a user have control over the range of relative rotation. The Examiner has overlooked the fact that the

polygon shapes of Bai in Fig. 3, on which the Examiner relies, are all selected to prevent rotation between the inner and outer bodies.

Claim 16, as amended herein, recites that magnetic fields of different polarity can be alternately generated along the length of the envelope body and along the length of the inner body for the selective production of a mutual attraction of the two bodies. In Avellanet, the magnetic coupling between the magnet 22 and the magnetic section M of the guidewire 12 is of a single polarity and is not alternately generated along the length of the envelope body and along the length of the inner body for the selective production of a mutual attraction of the two bodies, as claimed. The Examiner's comment that a magnetized portion of only one nanometer could be read as being along the length of the body is not valid since a nanometer-size magnetized portion would be microscopic and would certainly not be construed by one of ordinary skill as being along the length of the envelope body.

Applicant also traverses the Examiner's contention that functional limitations are not accorded patentable weight. All functional language set forth in the claim must be given full weight. As stated by the Board of Appeals and Interferences in Ex parte Bylund, 217 USPQ 492, 498 (BPAI 1981):

...Although we have sustained several of the Examiner's rejections we here wish to specifically note that contrary to the Examiner's assertions, functional language in the claims must be given full weight and may not be disregarded in evaluating the patentability of the subject matter defined employing such functional language. However, the applicant must establish that what is taught by the reference does not inherently function in the manner required by the claim.

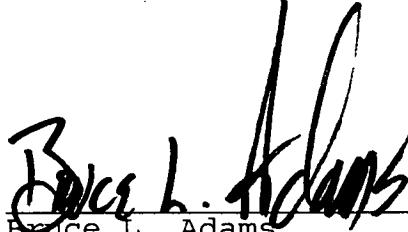
Independent claim 22 recites a device for at least partial introduction into a body passage, comprising inner and outer bodies having plural sidewalls that define polygonal cross sections, and corners of adjoining sidewalls of the inner body contact sidewalls of the outer body to limit the extent of relative rotational movement of the inner and outer bodies to impart stiffness to the device. Whayne in combination with Bai does not disclose, suggest or render obvious the device of claim 22.

Claim 26 relates to a device for at least partial introduction into a body passage comprising outer and inner tubular bodies, and means for selectively creating magnetic attraction forces of opposite polarity between the inner and outer bodies at spaced-apart locations along the length thereof to restrain relative movement between the inner and outer bodies to impart stiffness to the device. Whayne in combination with Avellanet does not disclose, suggest or render obvious the device of claim 26.

In view of the foregoing, the application is now believed to be in allowable form. Accordingly, favorable reconsideration and passage of the application to issue are respectfully requested.

Respectfully submitted,

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MAILING CERTIFICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on the date indicated below.

Donna Riccardulli
Name

Signature

MAY 11, 2010

Date